

FILED

APR 14 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *Williams*

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA

No. 03-2283; 04-0383

RICHMOND KELLY TURNER
Bar No. 002445

**HEARING OFFICER'S
REPORT**

RESPONDENT

PROCEDURAL HISTORY

The State Bar filed a Complaint on May 28, 2004. Respondent filed an Answer on June 28, 2004. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on March 17, 2005. A telephonic oral argument on the proposed agreement was held on April 5, 2005 and an evidentiary hearing was held on April 12, 2005.

FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on October 1, 1969.

COUNT ONE (File No. 03-2283)

2. The Honorable William J. O'Neil, in the Superior Court for Pinal County, Arizona entered a Minute Entry Order dated (12/18/2003) in the case of *First American Credit Union v. Robert Norbert Walker, et al*, CV2003-00345, which reads as follows:

This Court previously took under advisement the issue of the payment of attorney fees for the hearings previously scheduled before this Court. Fees are

1 awarded in the amount of \$500.00 against Richmond K.
2 Turner, Esq. as attorney for Patty Walker for his failure
3 to appear and his contemptuous actions during the
4 course of this litigation. Fees are not awarded against
5 the Defendants but rather directly against Richmond K.
6 Turner.

7 The Court notes that Richmond K. Turner filed an
8 Answer and thereby giving his Notice of Appearance
9 on behalf of the Defendant, Patty L. Walker, on or
10 about May 5, 2003. From that time, it is undisputed
11 that he failed to respond to pleadings or to submit
12 discovery or in the event of inability of contacting his
13 client, to withdraw. In short, counsel for the Defendant,
14 Patty W. Walker, did nothing. This Court scheduled
15 this matter for hearing but he did not appear. The
16 Motion to Compel contains numerous correspondences
17 requesting response, none of which were forthcoming.
18 It is well within the rights of Defendant to file
19 bankruptcy. It is not within the right of an officer of the
20 Court to ignore proceedings nor orders of the Court to
21 appear.

22 3. The aforementioned Minute Entry Order also directed the Clerk of
23 the Court to forward a copy of the Minute Entry to the State Bar of Arizona for
24 review of the actions of Respondent. Said Minute Entry Order is final and not
25 pending appeal.

26 4. Pursuant to letter dated February 18, 2004, Respondent was
informed by Staff Bar Counsel for the State Bar of Arizona that an investigation
into his professional conduct, concerning the above-referenced Minute Entry
Order entered by Judge O'Neil, was initiated pursuant to Rule 54(b),
Ariz.R.S.Ct.; and, said letter to Respondent informed him of those ethical issues
being investigated and directed him to submit a written response pursuant to Rule
53(d) and (f), Ariz. R. S. Ct.

5. By letter dated March 10, 2004, and received by the State Bar on
March 15, 2004, Respondent submitted the following explanation for his
professional conduct:

1 I am in receipt of your February 18, 2004 and the Bar
2 Complaint. The attorney fees have now been paid. The
3 actions taken by me in this case originally arose out of
4 my representation of Mrs. Walker in a dissolution
5 action. She requested that I file an Answer on her
6 behalf in the First American Credit Union action.
7 Shortly thereafter she informed me not to proceed
8 forward with any defense as she and her husband
9 intended to file bankruptcy and therefore did not care if
10 a default was taken. It was believed, and I believe set
11 forth in Defense Counsel's Petition for Attorney Fees
12 that he was aware of Mr. Walker's intention to file
13 bankruptcy.

14 On hindsight, I should have withdrawn my
15 representation of Mrs. Walker in this matter. At the
16 time I believed her filing of bankruptcy would stay the
17 action and ultimately be dismissed as uncollectible. My
18 client's delay in actually filing for bankruptcy led to the
19 above problem. I do not do bankruptcy and was not
20 handling the matter for my client.

21 6. At the hearing on this matter Respondent testified and confirmed his
22 response to the State Bar. Respondent testified that his client asked him not to
23 proceed with a defense of the case as she had no defense and intended to file for
24 bankruptcy as soon as her divorce was final. In addition he testified that in
25 September 2003 he wrote to his client, Ms. Walker, and asked her to sign a
26 consent to his withdrawal as her attorney of record in CV2003-00345. A copy of
that letter, dated September 24, 2003, with the attached Application for
Withdrawal and Consent, was admitted as Exhibit 3 at the hearing.

7. Respondent testified that he received no response to that letter and as
a result of inadvertence and poor office management failed to follow up by filing
a Motion to Withdraw Without Client Consent.

8. Respondent testified that he realized that he should have filed a
motion to withdraw and that and that his failure to do so resulted in a waste of the
Court's and opposing counsel's time for which he was both contrite and
embarrassed.

1 16. A fee dispute arose between Ms. Chavira and Respondent. That
2 dispute resulted in litigation. *Chavira v. Richmond K. Turner, et al.*, Maricopa
3 County Superior Court No. CV2003-014893. In her complaint in that action, Ms.
4 Chavira alleged that Respondent performed services on behalf of Respondent's
5 law practice and agreed to compensate her based on the hours she worked and the
6 results obtained. Exhibit 1 at ¶3. Ms. Chavira alleged she communicated
7 frequently with Respondent but had not been paid in full for all of the services
8 rendered and costs she advanced.

9 17. The matter was subject to mandatory arbitration and a final award
10 (dated March 3, 2004) was issued and entered in that matter on April 8, 2004.
11 That award held that the alleged unwritten agreement between the parties was
12 unenforceable because it was an agreement to pay fees for legal services to a
13 person not admitted to the practice of law in Arizona. *See Peterson v. Anderson*,
14 155 Ariz. 108, 111, 245 P.2d 166, 169 (App. 1987). The arbitrator found that the
15 activities for which Ms. Chavira sought compensation were "legal services" and
16 not authorized as part of her activities as a public adjuster.

17 18. A copy of that arbitration award was submitted to the State Bar's
18 Unauthorized Practice of Law section, which resulted in the investigation of the
19 matter pursuant to Rule 54(b), Ariz.R.S.Ct.

20 19. Ms. Chavira appealed the arbitration award. Respondent tendered an
21 offer of judgment which Ms. Chavira accepted. Judgment in favor of Ms.
22 Chavira in the amount of \$15,000.00 (slightly less than half the amount Ms.
23 Chavira claimed) was entered against Respondent on December 1, 2004.

24 20. In its Complaint the Bar alleged that Respondent's conduct violated
25 Rule 42, Ariz.R.S.Ct., specifically, ER 1.1 (competence), 1.3 (diligence), 5.3
26 (responsibilities regarding non-lawyer assistance), 5.4 (sharing fees) and 5.5

1 (unauthorized practice of law), 7.2(b) (payment for recommendation of lawyer's
2 services), 8.4(a)(d) (professional misconduct) and Rules 31(b) (authority to
3 practice) and 53(a)(c), Ariz.R.S.Ct. However, it now conditionally concedes it
4 has little or no evidence to support those allegations which far exceed the issues
5 framed by Ms. Chavira's complaint. In addition, the judgment entered as a result
6 of Ms. Chavira's acceptance of Respondent's judgment would not be binding for
7 purposes of collateral estoppel. *See 4501 Northpoint LP v. Maricopa County*, 209
8 Ariz. 569, ¶ 17, 105 P.3d 1188, 1193 (App. 2005).

9 CONDITIONAL ADMISSIONS

10 21. Respondent conditionally admits, for purposes of this agreement
11 only, that his conduct as described in Count One of the Complaint violated Rule
12 42, Ariz.R.S.Ct., ERs 1.3, 3.2, 3.4, 8.4(d) and Rule 53(c), Ariz.R.S.Ct.

13 22. The State Bar conditionally agrees, for purposes of this agreement
14 only, to dismiss the alleged violations charged in Count Two of the Complaint,
15 specifically ERs 1.1, 1.3 (Count Two only), 5.3, 5.4, 5.5, 7.2(b), 8.4(a), and (d),
16 and Rules 31(b) and 53(a) and (c), Ariz.R.S.Ct.

17 ABA STANDARDS

18 In determining the appropriate sanction, the Hearing Officer considered the
19 American Bar Association's *Standards for Imposing Lawyer Sanctions*
20 ("*Standards*") and Arizona case law. The *Standards* provide guidance with
21 respect to an appropriate sanction in this matter. The Supreme Court and the
22 Disciplinary Commission consider the *Standards* a suitable guideline. *In re*
23 *Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*,
24 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

1 In determining the appropriate sanction, both the Court and the
2 Commission consider the duty violated, the lawyer's mental state, the actual or
3 potential injury caused by the misconduct and the existence of aggravating and
4 mitigating factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; *Standard* 3.0.

5 The most serious misconduct in this case is Respondent's interference with
6 the Walker legal proceeding by failing to respond to discovery and failing to
7 attend the scheduled conference. ABA *Standard* 6.2 (Abuse of the Legal
8 Process) identifies appropriate sanctions.

9
10 6.23 provides that:

11 Reprimand (censure in Arizona) is generally
12 appropriate when a lawyer negligently fails to comply
13 with a court order or rule and causes injury or potential
14 injury to a client or other party or causes interference or
15 potential interference with a legal proceeding.

16 Respondent conditionally admits that he failed to act with reasonable
17 diligence and promptness in representing his client by failing to respond to
18 pleadings, failing to appear in court and failing to comply with the civil rules of
19 discovery in Pinal County Superior Court case number CV200300345, *First*
20 *American Credit v. Walker*.

21 As a result of this conduct, Respondent conditionally admits that his
22 conduct violated Rule 42, Ariz. R. S. Ct., specifically ERs 1.3, 3.2, 3.4(d), 8.4(d)
23 and Rule 53(c), Ariz.R.S.Ct.

24 AGGRAVATING AND MITIGATING FACTORS

25 Based on the foregoing conditional admissions, the presumptive sanction is
26 a censure. After determining the presumptive sanction, it is appropriate to
evaluate aggravating and mitigating factors that would justify an increase or
decrease in the presumptive sanction. *See In re Scholl*, 200 Ariz. 222, 225-26, 25

1 P.3d 710, 713-14 (2001); *In re Savoy*, 181 Ariz. 368, 371, 891 P.2d 236, 239
2 (1995).

3 The parties agree that there are two aggravating factors present in this case:
4 multiple offenses (i.e., non-compliance with discovery requests and failure to
5 comply with court order), *Standard 9.22(d)*; and substantial experience in the
6 practice of law, *Standard 9.22(i)*.

7 In mitigation the parties agree Respondent has no prior disciplinary history.
8 *Standard 9.32(a)*. Respondent has made a full and free disclosure to the State Bar
9 and has been cooperative throughout these proceedings. *Standard 9.32(e)*.
10 Respondent has received other sanctions in the form of a \$500.00 attorney fee
11 award in the *First American Credit Union* case. *Standard 9.32(k)*. Respondent
12 has demonstrated remorse for his actions as evidenced both by the tenor of his
13 submissions to the Bar during these proceedings and his testimony and demeanor
14 at the hearing. *Standard 9.32(l)*.

15 PROPORTIONALITY REVIEW

16 An effective system of professional sanctions, requires internal
17 consistency. It is, therefore, appropriate to examine sanctions imposed in cases
18 that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772.
19 However, the discipline in each case must be tailored to the individual case, as
20 neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at ¶ 61,
21 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In*
22 *re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

23 In *In re Harrison*, SB-05-0116-D (2004), Harrison failed to disclose
24 relevant information in his client's responses to interrogatories and failed to
25 cooperate in the discovery process. Harrison also failed to act with reasonable
26 diligence and promptness (ER 1.3), failed to make reasonable efforts to expedite

1 litigation consistent with the interests of this client (ER 3.2), failed to make
2 reasonably diligent efforts to comply with a legally proper discovery request by
3 an opposing party (ER 3.4(d)), and engaged in conduct prejudicial to the
4 administration of justice (ER 8.4(d)). Harrison was sanctioned for unprofessional
5 conduct and was ordered to pay costs and attorney's fees associated with his
6 dishonesty and discovery abuse. As part of the Harrison Consent Agreement, the
7 Bar dismissed additional violations of ERs 1.4, 1.16, 3.3(a), 3.4(c), 4.1, 8.1 and
8 8.4(c). The Hearing Officer agreed with the parties that one aggravating factor
9 (9.22(c), pattern of misconduct) and four mitigating factors (9.32(a), absence of a
10 prior disciplinary record; 9.32(b) absence of a dishonest or selfish motive; 9.32(f)
11 inexperience in the practice of law; and 9.32(k) imposition of other penalties or
12 sanctions) applied to the case and Harrison was censured and placed on two years
13 probation.

14 In *In re Reilly*, SB-04-0006-D (2004), the Disciplinary Commission
15 censured Reilly and placed him on probation for a period of two years for failing
16 to communicate with his client, failing to expedite litigation and failing to provide
17 discovery as required by the court. In addition, Reilly failed to notify the court,
18 opposing counsel and his client that he was suspended as a result of ethical
19 violations related to unrelated cases. Prior disciplinary offenses (9.22(a)) and
20 substantial experience in the practice of law (9.22(i)) were the two factors found
21 in aggravation while 5 factors were found in mitigation: absence of a dishonest or
22 selfish motive, 9.32(b); personal or emotional problems, 9.32(c); timely good
23 faith to make restitution or to rectify consequences of misconduct, 9.32(d); full
24 and free disclosure to disciplinary board or cooperative attitude towards
25 proceedings, 9.32(e); and finally, remorse, 9.32(l).

1 Finally, in *In re Griffiths*, 2002 Ariz. Lexis 190, SB-02-0114-D, Griffiths
2 was suspended for a period of six months and one day. Unlike this case, Griffiths
3 failed to appear in the proceedings and discipline was entered by default.
4 Griffiths violated ERs 1.4, 3.2, 3.4(c), 5.5, 8.4(d) and Rules 31(c)(3) and 51(e)
5 and (k), Ariz.R.S.Ct. Griffiths failed to appear at several hearings and settlement
6 conferences and failed to submit court ordered settlement memoranda and a joint
7 pre-hearing statement. The court heard a motion for sanctions against Griffiths
8 but rather than impose sanctions notified the State Bar of Griffiths' conduct.
9 *Griffiths* is distinguishable from the instant case because Griffiths had a varied
10 history of prior discipline, including twice being summarily suspended for failing
11 to sign her dues statement and for non-payment of dues. The *Griffiths*' Hearing
12 Officer indicated that he was "troubled by imposing such a suspension when the
13 conduct at issue...failure to appear at court hearings and to inform the client
14 about it, would rarely result in such a sanction." Also, the only mitigating factor
15 found in *Griffiths* was absence of a dishonest or selfish motive (9.32(b)). Prior
16 disciplinary offenses (9.22(a)) and a pattern of misconduct (9.22(c)) were
17 determined to be aggravating factors.

18 In this case, Respondent has paid the Court Ordered sanctions.
19 Respondent's failure to diligently pursue his client's case rose out of his
20 misunderstanding of the client's position regarding the bankruptcy matter. The
21 client was not damaged in this matter because she did not want Respondent to
22 defend against the claim and did in fact file bankruptcy. Nonetheless,
23 Respondent recognizes that he was obligated to either respond to the discovery
24 requests and appear at the noticed superior court hearing or timely withdraw from
25 representing his client in that case.
26

2 cases justify the presumptive sanction of a public censure and one-year probation.

3 **RECOMMENDATION**

4 Based on the foregoing, I recommend acceptance of the parties' agreement
5 as follows:

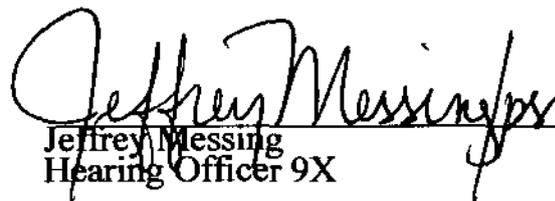
6 1. Respondent shall receive a Censure for violation of Rule 42, Ariz. R.
7 S. Ct., specifically ERs 1.3, 3.2, 3.4(d), 8.4(d) and Rule 53(c), Ariz. R. S. Ct.

8 2. Respondent shall be placed on probation for a period of one-year,
9 effective upon the signing of the probation contract;

10 3. Within thirty (30) days from the entry of the final Judgment and
11 Order Respondent shall contact the State Bar's Ethics Enhancement Program
12 (EEP) and Law Office Management Assistance Program (LOMAP) in order to
13 participate in these programs and Respondent shall fully comply with the
14 requirements thereof; and

15 4. Respondent shall pay all costs and expenses incurred by the State
16 Bar in these proceedings.

17 DATED this 14th day of April, 2005.

18
19
20 
21 Jeffrey Messing
Hearing Officer 9X

22
23 Original filed with the Disciplinary
Clerk this 14th day of April, 2005.

24 Copy of the foregoing mailed this
25 14th day of April, 2005, to:

26

1 Richmond Kelly Turner
Respondent
2 *Reeing & Turner, P.A.*
401 West Baseline Road, Suite 107
3 Tempe, Arizona 85283-5349

4 Michael N. Harrison
Bar Counsel
5 State Bar of Arizona
4201 North 24th Street, Suite 200
6 Phoenix, Arizona 85016-6288

7 by: *Williams*

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